

07-2042 PG

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District OF PUERTO RICO	
Name (under which you were convicted): CARLOS M. ESCOBAR-FIGUEROA		Docket or Case No. 02-CR-393-23 (PG)	
Place of Confinement: F.C.I. MIAMI, FL. P.O. Box 779800 Miami, FL 33177-0200		Prisoner No.: 23585-069	
UNITED STATES OF AMERICA Respondent,		Movant (include name under which you were convicted) CARLOS M. ESCOBAR-FIGUEROA	

 RECEIVED & FILED
 2007 OCT 31 AM 8:25
 U.S. DISTRICT COURT
 SAN JUAN, P.R.

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

United States District Court, District of Puerto Rico,
Federal Building .- SAN JUAN, PUERTO RICO. 00918-1767

(b) Criminal docket or case number (if you know): 02-CR-393-23-(PG.)

2. (a) Date of the judgment of conviction (if you know): GUILTY.- SEPTEMBER 29, 2003

(b) Date of sentencing: JANUARY 23, 2004 by Honorable Judge PEREZ GIMENEZ

3. Length of sentence: Two Hundred & ninety-two months [292] Months.

4. Nature of crime (all counts): VIOLATION TO Title 21 U.S.C. §841(a) And §846 Conspiracy
Count One(1) of the Indictment in this Case , Guilty by Jury Verdict, to "CONSPIRACY
TO CONTROLLED SUBSTANCES §841(a) in the amount as it indicated in the Indictment
Controlling this Case. 5 Kilos o more cocaine 50 grams crack.

5. (a) What was your plea? (Check one)

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

I Plea No Guilty and went to Trial By Jury.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No **XXX**
8. Did you appeal from the judgment of conviction? Yes **XXX** No ☐
9. If you did appeal, answer the following:

(a) Name of court: FIRST CIRCUIT COURT OF APPEALS

(b) Docket or case number (if you know): N° 04-1258

(c) Result: DENIED AFFIRM CONVICTION

(d) Date of result (if you know): JULY 07, 2006

(e) Citation to the case (if you know): no/available

(f) Grounds raised: (1) "Lack of Sufficiency of Evidences; (2) Should have been Sentence under "Minor Participant; (3) Enhancement for weapons Illegal No Grounds For Application; (4) Defendant Was Sentence Under Mandatory Guidelines Contrary to The Enunciate By U.S. Supreme Court under "BLAKELY" & "BOOKER"

NOTE: MOST OF THE GROUNDS DON'T WERE DECIDE BY CIRCUIT JUDGES BECAUSE ,NO WERE ABJECTED AT TRIAL "INEFFECTIVE ASSISTANCE AT TRIAL???"

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes **XXX** No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): N°: 06-7004

(2) Result: PETITION FOR CERTIORARI .- DENIED WITHOUT ANY REVIEW BY THE COURT.

(3) Date of result (if you know): NOVEMBER 06, 2006

(4) Citation to the case (if you know): NO/AVAILABLE AT THIS TIME

(5) Grounds raised: WHETHER HONORABLE COURT FOR THE FIRST CIRCUIT ERROR BY AFFIRMING JUDGEMENT OF CONVICTION. BASIC BECAUSE ISSUES IF MERITORIOUS DON'T WERE OBJECTED AT TRIAL BY FORMER DEFENSE ATTORNEY

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No **XXX This Motion Under §2255 is the FIRST POSTCONVICTION FILED**

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: NO/APPLICABLE

(2) Docket or case number (if you know): SEE (a)(1)

(3) Date of filing (if you know): *** **

(4) Nature of the proceeding: NO/APPLICABLE

(5) Grounds raised: NO EXIST ANY PRIOR POST CONVICTION REMEDY.-

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ NO/APPLICABLE

(7) Result: N/A

(8) Date of result (if you know): " " "

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: NO EXIST ANY PRIOR MOTION. PETITION OR APPLICATION

(2) Docket or case number (if you know): SEE THE ABOVE

(3) Date of filing (if you know): " " " "

(4) Nature of the proceeding: " " " "

(5) Grounds raised: " " " "

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒ NO EXIST ANY PRIOR MOTION. PETITION AND/OR APPLICATION.

(7) Result: NO EXIST ANY PRIOR MOTION. PETITION AND/OR APPLICATION.

(8) Date of result (if you know): " " " "

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ NO EXIST ANY PRIOR PETITION

(2) Second petition: Yes ☐ No ☐ NO EXIST ANY SECOND PETITION

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: NO, BECAUSE NO EXIST ANY PRIOR MOTION, PETITION OR APPLICATION THIS ONE WOULD BE THE FIRST PETITION PRESENTED.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: WHETHER, INEFFECTIVE ASSISTANCE OF COUNSEL IN A CRIMINAL CASE IS UNDOUBTLY A VIOLATION OF THE SIXTH AMENDMENT RIGHTS, AN STRUCTURAL ERROR REVERSIBLE
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
PER SE. THAT DESERVE THE RELIEF INDICATED UNDER TENETS OF LAW. [] INEFFECTIVENESS COMING FROM "LACK OF DILIGENCE"; "INADEQUATE PREPARATION OVER THE FACTS SURROUNDED THE CASE"; "FAILURE TO FULFILL WITH THE STANDARDS FROM THE AMERICAN BAR ASSOCIATION (A.B.A.) (Sect. 4-41 at 4.53), FAILURE TO TO EXAMINE DISCOVERY MATERIAL THAT IS SO FUNDAMENTAL THAT CONSTITUTE THE CORNERSONE IN ALL CRIMINAL DEFENSE AND MAKE THE DIFFERENCE BETWEEN CONVICTION AND DISMISS OR RECEIVE A HIGHER SENTENCE. COURT RECORDS REFLECT SOME PART OF THIS INEFFECTIVENESS AS WELL SITUATIONS THAT ARE REFLECTED IN THE APPEAL OPINION FROM THE FIRST CIRCUIT COURT OF APPEALS. THIS MERITORIOUS ISSUE GIVE TO THIS MOVANT-CARLOS M. ESCOBAR-FIGUEROA THE OPPORTUNITY OR LAVERAGE TO ENLIGHT THE SPECIFIC SITUATION IN SEPARATE SECTION SEE MEMORANDUM OF LAW ATTACHED AT THIS FORM THAT SUPPORT THIS CLAIM OF VIOLATION OF THE SIXTH AMENDMENT BY RECEIVE INEFFECTIVE LEGAL REPRESENTATION.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒ INEFFECTIVE ASSISTANCE OF COUNSEL IS NOT GROUND IN DIRECT APPEAL

(2) If you did not raise this issue in your direct appeal, explain why: NORMALLY THIS ISSUE IS NOT RECOGNIZED IN DIRECT APPEAL NO OBJECTIONS DURING TRIAL AND NOT ARGUMENTS ABOUT THIS CONSTITUTIONAL VIOLATION OF THE SIXTH AMENDMENT RIGHTS. (ENLIGHTEN IN ATTACHE MEMORANDUM OF LAW)

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒ NO EXISTE ANY PRIOR MOTION AND/OR PETITION THIS-ONE IS THE FIRST.

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NO/APPLICABLE

Name and location of the court where the motion or petition was filed: NO EXIST ANY PRIOR MOTION, PETITION OR APPLICATION IN POESTCONVICTION REMEDIES

IN THIS CASE BEFORE HONORABLE DISTRICT COURT.

Docket or case number (if you know): N/A. - NO EXIST ANY PRIOR MOTION OR PETITION

Date of the court's decision: SEE THE ABOVE ENLIGHTEN

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ **NO, THIS THE FIRST ONE FILE TO THE DISTRICT COURT**

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ **SEE THE ABOVE ENLIGHTEN**

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ **NO/APPLICABLE**

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NO/APPLICABLE

Docket or case number (if you know): "/ " " "

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or

raise this issue: THIS IS THE FIRST POSCONVICTION MOTIO, PETITION OR APPLICATION PRESENTED TO THE DISTRICT COURT. NO EXIST ANY PRIOR MOTION.

GROUND TWO: WHETHER, MOVANT-ESCOBAR-FIGUEROA, SHOULD HAVE BEEN SENTENCE AS MINOR PARTICIPANT [3B1.2(b)] AND WITHOUT APPLICATION OF USSG. 2D1.1(a)(3) NO WEAPON(S) &(b)(1)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

ENVOLVED, NO PROVE OF THE EXISTENCE OF ANY POSSESS BY MOVANT DURING ANY TRANSACTION. THE TESTIMONY AND AS EVIDENCE THAT COMING FROM LAW ENFORCEMENT AGENTS SUPPORT THE NO EXISTENCE OF WEAPONS BY THIS MOVANT. THE GOVERNMENT WITNESS VIOLATE THE FEDERAL ANTI-GRATUITY STATUTE 18 U.S.C. §201(c)(2) THAT FORBIDS ANYTHING OF VALUE TO A WITNESS FOR HIS TESTIMONY [ABDUL MENDOZA LEBRON] SPECIALLY THAT EXIST DISCREPANCIES IN HIS TESTIMONY THAT ES CORRABORATED BY THE ACTIONS AND MATERIAL OF THIS CASE.

SEE "MEMORANDUM OF LAW" ATTACHED TO THIS FORM.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐ BUT DO NOT WAS ACCEPTED BECAUSE WAS WAIVED BY TRIAL ATTORNEY???

(2) ~~Did you raise this issue in your direct appeal?~~ THE APPEAL OPINION SHOW
THE NEGLIGENCE, & LACK OF PREPARATION OF FORMER TRIAL COUNSEL, SENTENCE JUDGE ALSO
INQUIRE IN RELATION AND FORMER COUNSEL ACCEPT THAT NO EXIST NOTHING TO CORRECT REASON
OF THE EXISTENCE OF GROUND ONE OR CLAIM ONE " INEFFECTIVE ASSISTANCE COUNSEL "

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ NO EXIST ANY PRIOR, PETITION, MOTION OR APPLICATION THIS IS THE FIRST.
ONE.

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: SEE ABOVE NO PRIOR POSTCONVICTIONSName and location of the court where the motion or petition was filed: NO/APPLICABLEDocket or case number (if you know): NO EXIST ONE NO/APPLICABLEDate of the court's decision: SEE THE ABOVE ENLIGHTENResult (attach a copy of the court's opinion or order, if available): NO/APPLICABLE

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ SEE THE ABOVE ENLIGHTENS

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ NO EXIST ANY PRIOR POSTCONVICTION ACTION, THIS-ONE IS THE FIRST.

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SEE THE ABOVE -NO APPLICABLEDocket or case number (if you know): N/ADate of the court's decision: "/ "Result (attach a copy of the court's opinion or order, if available): NO/APPLICABLE

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: AS MENTIONED BEFORE NO EXIST ANY PRIOR MOTION, PETITION, OR APPLICATION FOR ANY POSTCONVICTION THIS ONE ACTUALLY FILED IS THE FIRST MOVANT-ESCOBAR-FIGUEROA ACTION RELATED TO POST-CONVICTIONS.

GROUND THREE: WHETHER, FORMER TRIAL ATTORNEY FAIL TO ARGUE AND/OR CLAIM THE VIOLATION OF THE FIFTH AMENDMENT CONSTITUTIONAL RIGHT BY VIRTUE OF THE EXISTENCE AND
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
FACT RELATED TO THE CONSTRUCTIVE AMENDMENT OF THE INDICTMENT AS WELL THE LACK OF JURISDICTION OF THE COURT TO IMPOSE SENTENCE OUTSIDE THE DECISION BY "JURY VERDICT" THE INDICTMENT WAS BROADEN TO HAVE THE POSSIBILITY TO IMPOSE THE WRONG AND ILLEGAL SENTENCE OUT-SIDE OF THE AUTHORIZED BY LAW. MOVANT WAS FOUND "GUILTY" BY JURY TO COUNT ONE CONSPIRACY TO VIOLATE THE CONTROLLED SUBSTANCE COCAINE IN THE AMOUNT OF 5 KILOGRAMS OR MORE. HONORABLE JUDGE OF SENTENCE EXPLAIN IN OTHER CODEFENDANT AT THE MOMENT OF SENTENCE WHAT MEANS 5 KILOS OR MORE, AND THE GUIDELINE APPLICABLE. HOWEVER QUANTITY OF DRUGS CERTAINLY IMPACT THE SENTENCE REASON FOR REFLECT AMOUNT INVOLVED IN THE INDICTMENT AND MORE IMPORTANT THE JURY VERDICT ENLIGHT THE AMOUNT OVER THE ONE MOVANT WAS FINDED GUILTY
SEE MEMORANDUM OF LAW IN SUPPORT THIS CLAIM (ATTACHED TO THIS FORM)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒ XXX

(2) If you did not raise this issue in your direct appeal, explain why: APPEAL ATTORNEY'S DO NOT RAISE THIS ISSUE EVEN THAT WERE INQUIRE BY THIS MOVANT THAT WHY?? I AM SENTENCE TO DIFFERENT QUANTITY THAT THE ONE WAS DECIDE BY PETIT JURY" CONSPIRACY 5 Kilos or more.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ no, no exist any prior conviction action as Motion,,Petition atc.

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NO/APPLICABLE SEE ABOVE.

Name and location of the court where the motion or petition was filed: _____

NO/APPLICABLE NO EXIST ANY PRIOR MOTION, PETITION OR APPLICATION.

Docket or case number (if you know): SEE ABOVE.

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): NO/APPLIED TO THIS CASE
BY REASON THAT NO EXIST ANY PRIOR MOTION, PETITION OR APPLICATION.

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ SEE THE ABOVE ENLIGHTEN.

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ " " " " " " " " " "

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ SEE ENLIGHTEN ABOVE

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): NO/APPLIED

Date of the court's decision: _____ " / "

Result (attach a copy of the court's opinion or order, if available): NO/APPLICABLE

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Because NO exist any PRIOR Motion, Petition Or Application Before of the one that is filed now.

GROUND FOUR: WHETHER, THE TRUE FACTS SHOW THAT Public Law 80-772 THAT SUPPOSED TO GIVE "JURISDICTION" TO THE DISTRICT COURTS OVER ALL FEDERAL OFFENSES, BEING INVALID,

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
HOWEVER, THE DISTRICTS COURT(S) CLEARLY LACK JURISDICTION. THE CONVICTION AND SENTENCE
ARE OR IS THEREFORE VOID. THE UNITED STATES SUPREME COURT HAVE THIS CHALLENGE THAT
INCLUDING TITLE 18 U.S.CRIMINAL CODE, ANY MATTER NEED TO STAY UNTIL FINAL DECISION
OF THE U.S. SUPREME COURT. SEE MEMORANDUM OF LAW IN SUPPORT (ATTACHED TO THIS FORM)

NOTE: NONE TRIAL ATTORNEY OR APPEAL ATTORNEY CLAIM ARGUE OR BRING THIS ISSUE TO THE COURTS ATTENTION.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒ ~~XXX~~(2) If you did not raise this issue in your direct appeal, explain why: I DON'T KNOW THE REASONS FOR
FORMER APPEAL ATTORNEY TO NO RAISE THIS ISSUE MAYBE UP TODAY HE DON'T KNOW THE EXISTENCE
OF THIS CLAIM THAT ARE AFFECTING THOUSANDS OF FEDERAL PRISONERS.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒ **NO , NO EXIST ANY PRIOR, MOTION, PETITION, OR APPLICATION**

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: NO/APPLICABLEName and location of the court where the motion or petition was filed: NO/APPLIEDDocket or case number (if you know): NO EXIST ANY PRIOR POST-CONVICTION MOTIONDate of the court's decision: SEE THE ABOVE ENLIGHTENSResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ **SEE THE ABOVE ENLIGHTENS**

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒ **N/A**

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ **NO/APPLICABLE**

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SEE ENLIGHTENS ABOVEDocket or case number (if you know): N/ADate of the court's decision: NO/APPLICABLE (N/A)Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: BECAUSE NO EXIST ANY PRIOR MOTION PETITION OR APPLICATION FOR POSTCONVICTION ACTION!!!

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: YES!! GROUND ONE: "INEFFECTIVE ASSISTANCE OF COUNSEL" NORMALLY

IS A CLAIM NO ACCEPTED IN "DIRECT APPEAL" BY REASON THAT SUCH CLAIM NEVER WAS OBJECTED ARGUE OR CLAIMED IN DISTRICT COURT PLUS NO EXIST COMPLETE RECORD IN THIS GROUND SOMETHING THAT MUST NEED TO DUE IN AN "EVIDENTIARY HEARING".

GROUND THREE: CONSTRUCTIVE AMENDMENT OF THE INDICIMENT FIFTH AMENDMENT VIOLATION AN STRUCTURAL ERROR REVERSIBLE PER-SE. GROUND FOURTH: INVALID OF P.L. 80-772 as enlighten.

COUNSEL(S) ERRORS TO NO BE APPROPRIATE PREPARED, USING THE KNOWLEDGE OF LAW, WORK MENTAL PRODUCT OF THE ATTORNEY???????

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☐ No ☒ XXX

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. NO/APPLICABLE

NOTE: ONLY GROUND N°4 BUT NOT IN MY CASE. IN PARTICULAR CLASS ACTION PENDING IN U.S. SUPREME COURT SEE info @NoCriminalcode.us.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: LUIS A. GUZMAN-DUPONT, Esquire., at Ponce de Leon 452 Suite 508 Asoc. De Maestros Building. HATO REY, PUERTO RICO. 00918 (Appointed)

(b) At arraignment and plea: SAME AS ABOVE

(c) At trial: SAME AS ABOVE Mr. LUIS A. GUZMAN-DUPONT, Esquire, (Appointed)

(d) At sentencing: SAME AS ABOVE

(e) On appeal: Mr. RAFAEL ANGLADA-LOPEZ AT P.O. Box 194886 SAN JUAN,
PUERTO RICO. 00919.

(f) In any post-conviction proceeding: THIS IS MY FIRST POSTCONVICTION PROCEEDINGS

(g) On appeal from any ruling against you in a post-conviction proceeding: NO/APPLIED

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒ ~~XXX~~

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒ ~~XXX~~

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: NO EXIST ANY FUTURE SENTENCE. -

(b) Give the date the other sentence was imposed: SEE ABOVE. -

(c) Give the length of the other sentence: SEE ABOVE. -

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ NO EXIST ONE FUTURE SENTENCE

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

ACCORDING WITH THE ANTITERRORISM AND DEATH PENALTY ACT 1996 (ADEPA) THIS MOTION UNDER TITLE 28 U.S.C. §2255 ARE TIMELY PRESENTED AS IT IS FILED BEFORE THE YEAR OF THE LAST ACTION IN COURT RELATED TO THE JUDGEMENT IN THIS CASE. U.S. SUPREME COURT DENIED "PETITION OF CERTIORARI. NOVEMBER 06, 2006.

copy letter attached to this form

NOTICE: THAT THIS MOVANT/PETITIONER ARE ACTING PRO-SE AND REQUIRE CONSIDERATION WITH THE APPLICABILITY OF THE WELL KNOW "MAIL BOX RULE" ACCORDING WITH: HOUSTON Vs. LACK, 487 U.S. 266,275, 108 S.Ct. 2379.,101 L.Ed. 2d.245(1998)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: CORRECT THE ILLEGAL PART OF THE SENTENCE, RECOGNIZE THE REDUCTION POINTS FOR "MINOR PARTICIPANT " AND DISCHARGE THE TWO POINTS ENHANCED UNDER 2D1.1(b)(1); RECOGNIZE THE MERITS OF CLAIM ONE & FOURTH or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on OCTOBER 24, 2007 (month, date, year).

Executed (signed) on 10/22/2007 (date).

Carlos M. Escobar Figueroa

Signature of Movant
CARLOS M. ESCOBAR-FIGUEROA
Reg. N° 23585-069 ("G" Unit)

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. NO/APPLIED MOVANT-ESCOBAR-FIGUEROA SING THIS FORM.

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *

Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for DISTRICT OF PUERTO RICO
Address ROOM-150, FEDERAL BUILDING
City, State Zip Code SAN JUAN, PUERTO RICO. 00918-1767
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

RECEIVED & FILED
2007 OCT 31 AM 8:24
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, PR

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

07-2042(PG)

CARLOS M. ESCOBAR-FIGUEROA.)

Movant/Petitioner,)

Vs.)

UNITED STATES OF AMERICA)

Respondent,)

CASE N°: 02-CR-393-23(PG).

CIVIL N°: Pending.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION PURSUANT TO TITLE 28 U.S.C.
SECTION §2255**

RECEIVED & FILED
2007 OCT 31 AM 8:24
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

TO HONORABLE COURT:

COMES NOW, CARLOS M. ESCOBAR-FIGUEROA, hereby the Movant/Petitioner acting Pro-Se, who respectfully moves to Honorable Court, To Vacate, Set Aside, and/or Correct Sentence (under the part that is illegal¹⁰, this pursuant to Title 28 U.S.C. §2255. Therefore in support of this Motion, Movant-ESCOBAR-FIGUEROA state as follow:

JURISDICTION

This Honorable Court has Jurisdiction over subject matters and to hear this Motion, according with the teaching from the "Antiterrorism And Death Penalty Act 1996", that Amend the proceedings for file a action under Title 28 U.S.C. §2255 and tolling a One(1) Year after **final** Judgement, Direct Appeal decision **or** after the 90 days for file a "CERTIORARI" with the U.S. Supreme Court; [] Moreover, pursuant to Title 28 U.S.C. §2255 A Prisoner **in custody** under final Sentence of a Court established by Act of the Congress, claim

[Next page]

.....claim to be released upon Grounds that the sentence was imposed in Violation of the U.S. Constitution and/or Law of the United States Of America, **or** that the Court was without Jurisdiction - Venue, to impose such sentence beyond the authorized by Law, **or** that the trial proceedings were no render fair because of the Ineffective Assisatnce of Counsel; []Reason(s) enough for Vacate, Set Aside **or** Correct Sentence.

VENUE

Venue is appropriate because this Motion is filed in the Sentencing Court of Movant-CARLOS ESCOBAR-FIGUEROA. In the United States District Court for the District Of PUERTO RICO.

TIMELY

This Motion is timely filed according with the regulations controlling Title 28 U.S.C. §2255., []As well with the enlightens from the Antiterrorism And Death penalty Act (April 24 1996) that Amended the time for file such Motion(s). The Final Judgement in this Case coming from NOVEMBER 06, 2006., Applicability of the well know "MAIL BOX RULE" is require as well applicability of Rule 45(e) Fed. R. Cri. Proced. Rely on **HOUSTON Vs. LACK** 487 U.S. 266, 275, 108 S.Ct. 2379, 101 L.Ed. 2d. 245(1998).

STATEMENTS OF THE CASE AND FACTS

On October 4, 2002., the Grand Jury return a Two Counts Indictment charging Movant-ESCOBAR and forty-two(42) co-defendants in Criminal N°02-CR-393(PG), Movant_ESCOBAR was charge in Count One(1) with a "Conspiracy" to posses with intent to distribute 5 kilograma or more of cocaine, 50 Grams or more of Crack and One(1) Kilogram of Heroin, in violation of 21 U.S.C. §841(a)(1) and §846.

On October 11 2002 Movant was arraigned by a Magistrate-Judge He plead Not Guilty to count One of the Indictment. Escobar-Movant was order detained without bail pending Trial. (DKT.#43-44 & #584

On August 5, 2003, the Case was called for Jury Trial.(DKT #594-597).The trial last for thirty (30) additional days. On September 29,2003., the Jury reach a VERDICT Of Guilty as to Count One(1) of the Indictment . The Jury also returned a special Jury VERDICT finding that the Conspiracy charged in Count One(1) involved the distribution and/or intent to distribute **1) Five(5) or more Kilograms of cocaine;(2) One(1) or more Kilograms of Heroin; and (3)fifty(50) Grams or more of cocaine base/crack.** The **Special verdict form** had provided the jury choice between three amounts for each drug type.

On December 10,2003, this Movant receive a copy of the PSI. from the U.S. Probation Office. On December 18,2003 Counsel for THIS Movant-ESCOBAR submitted a letter to the U.S. Probation Officer objecting to the inclusion of two(2) levels for supervisory role in the offense under U.S.S.G. §3B1.1(c) something that the Judge Presiden was oppossed and Granted the Objection with the enlighten that Movant-Escobar only be considered a **'runner'** He was only 13 years old at that time (Minor) and had been influence to commit the drug crimes.

Sentencing was held on JANUARY 23,2004. both Defendant-Escobar (Movant) and Former Counsel Mr LUIS GUZMAN were inquired in matters related to the contents of the PSI. the only objection was related to the two(2) points enhancement for "organizer"leader" etc. something that the Sentencing Judge PEREZ GIMENEZ denied to apply for the obvious reasons above mentioned.

It is a fact that the Defense Attorney did not question the amount of drugs set forth in the P.S.I., which the Judge later used as a basis for Sentencing...**NOTICE** that that amount in the P.S.I. is contrary to the Jury Verdict prejudice is tremendous.

Counsel for defendant-ESCOBAR the Movant in this action are supposed to be familiar with the material involved as JURY VERDICT & Amounts of drugs involved. 5 kilos compare with 150 Kilos in the PSI. Former Defense Trial Attorney after inquire many times for the Sentencing Judge **if something in the PSI. need to be corrected** He replied that nothing in the Report need correction (Inadequate Prepared??) except for the two(2) points enhancement for a managerial or supervisor. []When the Judge announced the removal of that two(2) points Level. MOVANT former Trial Counsel said "Very Well".....[t]hat would be all as to objections.

It is a true Fact that former Defense Counsel waived for purpose of Appeal precluding this Movant to be review in Direct Appeal the Arguments related to **1)** Minor Role in the supposed organization **(2)** Weapon enhancement and **(3)**Drug Quantity(ies) as was the will of the Jury Verdict. Attitude that fell below [a] reasonableness defense situation that in case to be argue, objected during the sentencing and after be inquire by the Judge many times **if** need something to be corrected in the PSI. Former Attorney answer no that is the only objection the two(2) level enhancement for Managerial or supervisor Role. Facts and evidences clearly reflect the Merits of the Issues raised in this Motion under 28 U.S.C. §2255, Therefore relief must be granted according with the tenets of Law.

ARGUMENTS AND CITATION OF AUTHORITY

ISSUE ONE (1).-

WHETHER INEFFECTIVE ASSISTANCE OF COUNSEL
IN A CRIMINAL CASE IS UNDOUBTEDLY A VIOLA-
TION OF THE "SIXTH AMENDMENT CONSTITUTIO-
NAL RIGHT: [] AN "STRUCTURAL ERROR THAT IS,
REVERSIBLE PER-SE

To begin wit, Ineffective Assistance Of Counsel in and itself entails a wide scope of review.

Movant-ESCOBAR-FIGUEROA, would submit that his former Defense counsel, did not provide him with the Legal Assisatnce to which He is entitled under the U.S. COnstitution, thus denying him His Right to the well know Effective Assistance Of Counsel.

Movant, claim and/or alleges existence of "Attorney Indife-rence"; "Lack of Diligence"; "Inadequate Preparation"; and that His Trial performance fell below reasonableness. The later would classified as incompetent Assistance.

Moreover, the "American Bar Association" (A.B.A.) set the "standars" that all criminal Defense Attorney **must be** accomplished and/or fulfill in order to render an Effective Legal representa-tion as indicated in the A.B.A. Standards **4-41 at 4-53 (2d Ed.Supp)**

"It is the duty of the Lawyer to conduct a prompt investigation of the circumstances of the Case and to explore all the avenues leading to fact relevent to the merits of the Case and **penalty(ies)** in case of Conviction. [T]he investigation shall always inclu-de efforts to secure information in possession of the ...

[Continue next page]

.....of the Prosecutor and Law enforcement Agency(ies).

This duty to investigate facts surrounded the Case as well the relief indicated under the Tenets of Law; The Protection of Constitutional Rights, situations so fundamental **to "constitute the very cornerstone"** for structuring available defense that would mark the difference between conviction opposed to acquittal. []It is equally evident that an objective standards of Reasonableness can not be support **any Attorney failure** to familiarize himself with **the facts of the Case**, Law applicable and **most** important to Preserve the Constitutional Rights of the Defendant

"Question Of Law & Facts???" Former Trial Attorney Fulfill All the above criteria and/or A.B.A. Standards?? **NO!**

Moreover, the U.S. Supreme Court has long recognized that Defendants as this Movant-ESCOBAR-FIGUEROA Sixth Amendment Rights to Counsel requires Effective Assistance of Counsel. **STRICKLAND Vs. WASHINGTON**, 446 U.S. 668,686,104 S.Ct. 2052,2064,80 LEd.2d 674 (1984); **UNITED STATES Vs. CRONIC**,446 U.S. 648,655(1984).

Case's Law where is enlighten the requirement for Defendants to show **or** fulfill with the two(2) prongs.....(1) [T]hat Counsel conduct so undermine the proper function of the adversial process and (2) [That the proceedings con not be relied on as having produced a Just or Fair result.MOVant-ESCOBAR-FIGUEROA fulfill these arguments ahead on this Pleadings or Motion Pursuant To Title 28 U.S.C §2255.-

Also is enlighten that an Effective Attorney is more than one who is a mere friend to the Court, an effective Attorney must play the role of an active advocate, devote dolely to the interest of His client. It is this kind of service for wich the 6th Amendment makes provision.

Also is good to consider that this is not a Case where Counsel made "[a] Strategy decision; rather Counsel's conduct **evince an abdication of His responsibility(ies)**, to his Client and it is such a Case that the Court most typically find Counsel performance **was below** the requisite level of competence **Rely on: MURRAY V. CARRIER, 447 U.S. 478,496 (1986)(Dictum)**. where is held:

" []The Right of effective Assistance of Counsel may in particular Case **be violated** by even an isolate error of Counsel **if that error** is sufficient **egregious and prejudicial**, although a Court conclude that a single **error** render Counsel Assistance ineffective

Counsel performance at any stage of a criminal proceedings is subject to challenge Ineffective Assistance including:
(A) Trial; (B) Sentence; (C) and Direct Appeal where the Fourteenth Amendment Guarantee representation in Appeals See: **EVITTs Vs. LUCEY 469 U.S. 387,398 (1985)**.

Therefore, since the issues involving each assignment of **error** are separate and distinct Movant-ESCOBAR-FIGUEROA will proceed as follow.

TRIAL AND SENTENCE ATTORNEY

Trial and Sentence records will clearly substantiate that Former Defense Attorney Mr. LUIS A. GUZMAN-DUPONT, COMMITTED **Prejudicial errors**,[]That he was unreasonable by acts **or** omissions, **that** failed to meet the prevailing Professional norms of Defense Counsel according with **STRICKLAND, Supra, Note # 97 at 2066**.

In the following situation that will be enlighten clearly would **be show** that former defense Counsel **Fell below an objective standards of [r]easonableness**, (Strickland at 687-88) and that there are a [r]easonable **probability** that, **but for Counsel Unprofessional errors** the result of the proceedings would been different Id. **at 692**.

TRUE FACTS: (a) Former defense Counsel fails to object to the actual Sentence imposed to this Movant that was the result to what is mentioned in the Presentence report and **not** in the JURY VERDICT decision; The Honorable Judge PEREZ GIMENEZ inquire to such Counsel no one, **but** more than two times if He have some Objections to the PSI. his answer was: **No the only objection is the point for Manager or supervisor.** [] Have such Counsel objected to the amount of Drugs mentioned in the Presentence Report that is contradictory to JURY VERDICT the Judge would apply the same position that take with other Co-defendant that when trail together as PEDRO DIAZ CLAVEL Sentence Transcripts **page 14 and 15** Where the Judge Clarify the Guideline Applicable according to the Jury Verdict Guilty of **5 kilograms but less than 15 kilograms Base offense level 32.**

The same reasoning was applied by Judge-PEREZ GIMENEZ in the other co-defendant that went trial together AS DENNYS CRUZ PEREIRA See **page 15 Sentence Transcripts for DENNYS CRUZ PEREIRA.**

NOTICE That in **page 13 DIAZ CLAVEL** the Judge make reference to Circuit Court Case (1st. Cir. U.S. Vs. RODRIGUEZ, 162 F3d. 135, Former defense Counsel was familiar with the evidences against his client also **was aware** of the JURY VERDICT HIS actions were abdication of responsibility, Negligence failure with the Work product mental of the Attorney in one word facts show the INEFFECTIVENESS THE VIOLATION OF THIS MOVANT SIXTH AMENDMENT RIGHT, AND STRUCTURAL ERROR THAT AFFECT THE COMPLETE FRAME OF THE CASE ERROR THAT INDICATE THE REMEDY DESERVE UNDER THE TENETS OF LAW.

True Facts are real and in favor of this Meritorious Claim the " CAUSE" is clear the prejudice is tremendous 200 Months more punishment.

(b) other of the failures of former defense Counsel that affect tremendous this case is the Failure of defense Counse to argue,object **or** claim the violation of the FIFTH AMENDMENT RIGH of this Movant-ESCOBAR-FIGUEROA when He **don't object** to the ... **"Constructive Amended Of The Indictment"** when the Indictment was broader to impose a Sentence contrary to the JURY VERDICT and contrary to the Charges in the Indictment and the elements of crime where:"The quantity of drugs certainly impacts the Sentence and **if** the Government have evidences WHY??? He don't present those amounts to the "GRAND JURY"??

The U.S. Supreme Court requires that the quantity be pled and prove **see Apprendi V. New Jersey,120 S.Ct. 2348(2000)**. In this Case before Honorable Court THE JURY VERDICT is according to the quantity mentioned in the Indictment Case N°02-CR-393-23(PG) **but.....** because Negligence, Inadequate prepared; Aware of thefacts of this situation no object, argue **or** claimed the illegal sentence imposed beyond to the authorized by the Law....with this proceed Defense Counsel Fails to meet the prevailing Professional norms of any Defense - Counsel,according with **STRICKLAND, Supra. Note #97 at 2066**. That prceed by former defense Counsel would be classified as **Incompetent Assistance**.

(c) **Other** of the failures that render Ineffective Assistance this Former Counsel Mr. LUIS GUZMAN-DUPONT is the situation that enhanced Movant sentence because the wrong application of U.S.S.G. 2D1.1(b)(1), When during Trial and trough the evidences never was presented a credible evidences that Movant use **or** carry **or** concil

.....any dangerous weapon **or** firearms in any Drug transaction. Testimony from Law Enforcement Agents that make surveillance; make controlled purchase of drug to Movant; Agents that search Movant place of living in two occasions **never** find any weapon, only small money and small envelopes of drugs, One of the Agents mentioned above testify the He know the Movant from the time He was a Child an never saw Movant with a weapon(s). See Testimony Agent RICARDO RIVERA, also EDWING ROSAS FERRER, and Police Officer CARLOS DE JESUS The last one is the one that search the place of living of this Movant-ESCOBAR-FIGUEROA .

The only Person that incriminate this Movant with carry weapons was ABDUAL MENDOZA-LEBRON that was receiving BENEFITS for his testimony. a codefendant testimony receiving benefits **must** need take with precaution and considered HERSAY. See TITLE 18 U.S.C. Section 201 (c)(2) Bribery of Public Official And witness. Former defense Counsel know all these facts, was aware of the material provided, **but** don't use His Knowledge and skill in the Law for Argue **or** object to the bribery testimony. No doubt about the abdication of Former Lawyer to fulfill the Standards of [r]easonableness and adequate prepared, render an Ineffective Legal Representation. [A]lso important is that the Jury Verdict no mention nothing related to involvement of weapons in any transaction by Movant.

(d) Other of the situation that reflect the Ineffectiveness from former Defense Counsel is the silent; no action, no claim the situation related that this Movant-ESCOBAR-FIGUEROA is entitled under tenets of Law to Applicability of U.S.S.G. § 3B1.2(b) **Minor participant**, two(2) points downward. (continue next page)

.....Have,former defense Counsel acting adequate,with Diligence, using the Work Product Mental Process of the Attorney,**no doubt exist,that...** the result of the proceedings would be different. as: [] "Sentence according to the JUTY VERDICT to Guideline level 32 as the other co-defendant in trial and in same conditions ". []"Be able to receive the benefits of **Minor participant** that fulfill the criteria from U.S.S.G. §3B1.2(b) as was enlighten by the Swentencing Judge Movant was a **runner**. "Cause & Prejudice are prove the damages because of that Ineffective Legal Representation is tremendous-----diference of + 200 Months of incarceration.

All the enlighten in this Claim are in accomplished with the Bench Mark Cases that support this Claim as:**STRICKLAND V. WASHINGTON,446 U.S. 668,686,104 S.Ct. 2052,80 LEd.2d 674(1984) Quaoiting..... McMANN V. RICHARDSON,397 U.S. 759,771 N. #14 (1970);MURRAY V. CARRIER, 447 U.S. 478,496(1986)(DICTUM).**

The Movant's right guaranteed by the Sixth Amendment were violated by the enlighten errors that are sufficiently**egregious and prejudicial.** []"Remedy is at hands of this Honorable District Court for the District Od PUERTO RICO, GRANTED this Motion and recognize the claim of "Ineffective Assistance of Counsel by virtue of the Legal Facts enlighten at lenght in this Issue One(1). As alternative... Granted an "Evidentiary Hearing" **if** the Court feel that the record is not complete for render a Faie decision.

.....The Honorable Judge PEREZ GIMENEZ (presiding) proffer during Sentence hearing from this Movant-ESCOBAR-FIGUEROA the reason(s) why? He don't will apply the enhancemnt two(2) points manager **or** Supervisor. []"He decline(judge) to grant to AUSA the two pints leadership enhancement **because.....He was acting more of a runner at the point.....it was more his brother,I think,who was in active participation as the leader at the point than this defendant(Carlos Escobar-Figueroa) Page # 8 & 9 ALSO is enlighten by the Circuit Judges in theirs Opinion page # 9, 10 & 11.**

[In]The context of these forty-three (43) defendants Indictment,Nine (9) years time frame and Seneteen(17) Drugs Points, The Honorable Court have found Movant-ESCOBAR-FIGUEROA **a minor participant pursuant to U.S.S.G. 3B1.2(b) and 2D1.1(a)(3).**

The situations above mentioned were well know by Former defense Attorney He was present during proceedings **BUT.....** for "Negligence"; "Inadequate Prepared" **don't** argue **or** claim these issues of the **benefit** to this Movant. Counsul conduct evinces an abdication of His responsability(ies) to His Client and it is in such cases that the Court most tipically find Counsel performance fell below the requisite level of competence as enlighten in: **MURRAY V. CARRIER,447 U.S. 478,496(1986)(DICTUM).**

THEREFORE, For all the above True Facts and Judge(s) enlightens Movant clearly asset that He has established a prima facie Case over His Claim of "Ineffective Assistance Of Counsel" a clear violation of the SIXTH Amendment Right, reason(s) enough for Movant be entitled to relief according with the Tenets of Law, be free of that unprofessional Legal representation.....(continue next page)

ISSUE TWO(2).-

WHETHER, MOVANT-ESCOBAR-FIGUEROA, SHOULD HAVE BEEN SENTENCE AS MINOR PARTICIPANT U.S.S.G. §3B1.2(b) and WITHOUT THE APPLICATION OF U.S.S.G. §2D1.1(b)(1) &(a)(3) NO, PROVE OF EXISTENCE OF POSSESSION OF WEAPONS-FIREARMS BY MOVANT IN ANY DRUG TRANSACTION. **MOREOVER**, SENTENCE JUDGE ENLIGHT DURING SENTENCE WHAT WAS THE POSITION OF THIS MOVANT IN THE OPERATION"RUNNER".

To beging wit, Movant's feel that is necessary to enlight the proffer enlighten by Honorable Judge PEREZ GIMENEZ Pages # 8 & #9 where the same Judge classified according with the evidences at Trial that this Movant position in the organization with more than 43 persons, 17 Drugs points and (9) years of frame time , He was a simple RUNNER.! Situation that meet the criteria for be **considered minor participant** in such organization MOVANT-CARLOS ESCOBAR-FIGUEROA occupied the lowest position in that shame organization. Former defense ATTORNEY never claim this Issue and/or argue the position of this Movant for be considered **Minor participant**. Remedy is at hands of Honorable Court, that is to GRANT the relief that this Movant is entitled under the Tenets of Law.

To continue with the situation related to the enhancement under U.S.S.G. §2D1.(b)(1) **posses dangerous weapon-firearms during Drugs transaction**. to beging wit, this claim Movant never would be charge with this **enhancement** as the Evidences and testimony(ies) show, **but...** for the Defense Attorney Ineffective Legal Assistance that never claim and/or object to the P.S.I. or the Court

To be a little more specific, this Issue was argue in the Claim One Ineffective Assistance Of Counsel situation that give the opportunity to this Movant to enlighten and/or argue separately.

Movant assert that The Trial records, Government evidences and even the available discovery and JENKS Material, are **devoid** of the presence of any "Actual" possession, "The state of immediate, hands-on, physical possession"., **or** even knowledge and intention, **U.S. ZAVALA-MALDONADO**, 23 F3d 4,6,8,(1st. Cir. 1994); neither "**constructive**" possession, **i.e.** when there is a concealed weapon strategically placed in a room where the defendant conduct his drug business, See **U.S. V. McLEAN**, 2005 WL 1355147 (1st Cir.06/09/05)(**slip op. 9**) There was no evidence at trial **or** in possession of the Governement to satisfy the definition of "Constructive Possession" that is, when a person knowingly has the power and intention at a given time to exercise dominion and control over an object either directly **or** through others. **U.S. V. CARLOS CRUZ**,352 F3d 499,510(1st.Cir. 2003).not requiring the ownwrship of the weapon, **U.S. V. LIRANZO**,385 F3d. 66,69 (1st.Cir.2004) See also **U.S. BARNARD N° 04-1920**(1st Cir. 06/14/05. Remedy is at hands of Honorable Court to Grant the relief that this Movant is entitled under the Tenets of Law and indicated by True Facts and evidences, as alternative Grant an Evidentiary hearing where Movant would be able to show all the Facts and prove the merits of this Issue II.

ISSUE THREE. -

WHETHER, THE "CONSTRUCTIVE AMENDED OF THE INDICTMENT
AFFECT MOVANT'S FIFTH AMENDMENT RIGHT AN ERROR THAT
IS REVERSIBLE PER-SE, THIS ACTION GO IN CONTRADICTION
TO JURY VERDICT.

[]A "Constructive Amendment of the Indictment occurs when the Honorable Judge at sentence alter the essential elements of the offense, as charge in the Indictment and specified in the JURY VERDICT. The U.S. Supreme Court requires that the Quantity be pled and prove Rely on: **APPRENDI V. NEW JERSEY 120 S.Ct.2348 (2000)**. In this Case the JURY VERDICT is crystal clear in relation to the Quantity for what this Movant was Guilty----- **5kilos or more of Cocaine, 50 Grams of Crack & 1 kilo heroin.** amounts that indicate the application of Guideline Level 32 as it is enlighten by Honorable Judge PEREZ GIMENEZ at sentence of co-defendants that were at trial with htis movant, co-defendants PEDRO DIAZ CLAVEL Sent.Transcripts **page 14,15**, and codefendant DENNYS CRUZ PEREIRA Sentencin Tra. **page 15**. See pages # 8,9. of this pleadings.

Therefore, this Issue is clear facts are undisputed, JURY VERDICT is unquestionable, Honorable Judge PEREZ GIMENEZ position is clear even that former defense attorney for this Movant never argue this Issue. Remedy is at hands of Honorable Court Grant the relief that this Movant is entitled under Tenet of Law. Correct the Reversible error and order a Re-sentence.

ISSUE FOURTH.-

WHETHER, PUBLIC LAW 80-772, ACT OF JUNE 25 1948, Ch.645 Section 1, 62 Stat 683 et seq., IS UNCONSTITUTIONAL AND VOID, BECAUSE H.R. 3190 NEVER PASSED BOTH HOUSES AS REQUIRED BY ARTICLE I, SECTION 7, CLAUSE 2 OF THE U.S. CONSTITUTION.

WHETHER, PERMITTING POST-ADJOURNMENT LEGISLATIVE BUSINESS PURSUANT TO **H.Con.Res. 219** VIOLATED THE QUORUM, BICAMERAL AND PRESENTMENT REQUIREMENTS OF ARTICLE I, OF THE CONSTITUTION.

WHETHER, A PURPORTED BILL SIGNED BY THE OFFICERS OF BOTH HOUSES OF CONGRESS AND PRESENTED TO THE PRESIDENT POST-ADJOURNMENT AND IN THE ABSENCE OF **QUORUMS** WHICH WAS NOT CERTIFIED AS TRULY ENROLLED NOR THE ENROLLED BILL IN FACT A CLEAR VIOLATION OF TITLE 1, UNITED STATES CODE, SECTION **106**, HOUSES RULE AND PRECEDENTS PROHIBITING SUCH ACTS, RENDER THE BILL SIGNED INTO **PUBLIC LAW 80-772 NULL AND VOID**.

WHETHER, THE DISTRICT COURT ORDERS COMMITTING MOVANT'S TO EXECUTIVE CUSTODY PURSUANT TO SECTION **3231 OF THE UNCONSTITUTIONAL PUBLIC LAW 80-772 WERE** ISSUED **ULTRA VIRES**, ARE UNCONSTITUTIONAL AND **CORAM NON JUDICE**, AND THEIR IMPRISONMENT ARE UNLAWFUL.

MOREOVER, THE SIGNATORIES OF **H.R. 3190** KNEW THE ENACTING CLAUSE WAS FALSE WHEN SIGNED.

Public Law 80-772 stated that the enacted proceed "by the Senate and House of Representative of the United States of America in **Congress Assembled**. Each signatory knew that either "House Legislative Existed at that time, and that the Legislative process **had ceased** within the terms of **Article i, Section 5 and 7** on JUNE 20, 1948.. **NOTICE** that this Questions of Law and Facts are actually presented in the only Court with Jurisdiction to decide matters
[continue next page]

.....to decide matters as the ones Presented in this Issue that Court is the United States Supreme Court this in view of the "Limited" Jurisdiction of Federal Courts as Courts of ARTICLE III, **KOKKONEN V. GUARDIAN LIFE Ins. of Am. 511 U.S. 375,377(1994)** enlight the situation of Jurisdiction L I M I T E D .

The Unconstitutionality as enlighten in the Questions at the begining of this Issue render every Federal District Court Judge civilly liable for every exercise of Jurisdiction pursuant to: Title 18 U.S.C. §3231. See **STUMP V. SPARKMAN,435 U.S. 349,358-359 (1978)**. JUDges of Courts of Limited Jurisdiction have been held civilly liable **upon void Jurisdiction.**

The sensivity of the issue "requires" address[ing] the applicability of [28 U.S.C.]§455 with the same degree of care attention. This Issue are actually in the U.S. Supreme Court for Ruling are presented for more than One Thounsand Inmates with the support of more than 75 ATTORNEY include some LAW professors.

With this Issue that show the Lack of Jurisdiction of the District Court or Courts of Limited Jurisdictio because are calling COURTS OF ARTICLE III. this Movant-CARLOS M. ESCOBAR-FIGUEROA would be obtained a complete and immediatly release. as He is entitled under the Tenets of Law.

/_____/

C O N C L U S I O N

WHEREFORE, For all the foregoing Legal reason(s) enlighten at length in this pleadings Movant-CARLOS M. ESCOBAR-FIGUEROA. assert that He has established a "Prima Facie Case" that His actual JUDgement -Sentence is an Illegal one, where COURT Lack of Jurisdiction to impose a Sentence beyond of the authorized. Sentence is the product of Constitutional Violations in the SIXTH and FIFTH Amendment Constitutional Rights as enlighten. the DUE PROCESS Of LAW. Existence of Errors Per-Se Reversibles, all situations that are irrefutable as the "Structural Errors" as the existence of "Ineffective Legal Assistance of Counsel" all enlighten and argue at length in this Pleadings as many Cases Law from the Supreme Court Support the Merits of the Claims.

Movant is also of the opinion that no one expect a perfect Trial and this Movant can related to Human errors **or** frailty **but...** when the process are controlled or manipulated for the audience involved **then** the initiation of that criminal process ceased to be Fair and become dangerous, because of their violative of the Constitution, Due Process Of Law and Congressional Intent when act the Law as Title 21 U.S.C. §841(a)(1) and the Penalty(ies) Phase.

Movant have a Constitutional Right to Legal Effective Assistance, to Due Process Of Law. in all the steps of criminal Cases to be able to have A Fair Trial of his Case include the Sentence and Appeals.

Therefore, Movant-CARLOS ESCOBAR-FIGUEROA, Pray for the following relief. to be GRANTED THE RELIEF THAT He is entitled

.....under the Tenets of Law and any other relief that Honorable Court seems Legally necessary to prevent any Factual and Manifest Miscarriage of Justice. Grant and "Evidentiary Hearing according with the Rule 8 (a) controlling all the 28 U.S.C. §2255..That would permit to Supplement the Court Records and this Movant would be able to show the Merits of His Claims. Pray for Resentence this Movant according with the principles of Law enlighten at lenght in this Pleadings.

MOAVNT/PETITIONER SHALL EVER PRAY:

RESPECTFULLY SUBMITTED

Carlos M. Escobar Figueroa
CARLOS M. ESCOBAR-FIGUEROA

** ACTING PRO-SE**

Reg. N° 23585-069 ("G" Unit)

P.O. Box 779800

/ MIAMI, FLORIDA. 33177-0200 /

DATED: On This 24th Days
October 2007

/ _____ /

CERTIFICATE OF SERVICE

I CARLOS M. ESCOBAR-FIGUEROA, hereby the Movant acting Pro-Se certify that on this October 24 ,2007., was given to the Prison Authorities for MAiled Fisrt Class, Postage Pre-Paid the Foregoing Motion Under Title 28 U.S.C. To the following interested party(ies)

Mr. NELSON PEREZ SOSA
ASSISTANT U.S. ATTORNEY
Torre Chardon, Room 1201
SAN JUAN, PUERTO RICO. 00918

PROOF OF SERVICE FOR INSTITUTIONALIZED OR
INCARCERATED LITIGANTS

Ithe undersigned, certify that this Motion under Title 28 U. S.C. §2255 and any attachement wa given to the Prison authorities for forwarding the same to the interested Party mentioned Above as well the Original And Two(2) copies of the same to the CLERK OFFICE, UNITED STATES DISTRICT COURT, Room 150 Federal Building, SAN JUAN, PUERTO RICO. 00918-1767 []All the above is true and correct according to the teaching from Title 28 U.S.C. §1746. and the proffer for Rule 54(e) Fed R. Cr. Proced. as well the teachings from HOUSTON V. LACK 487 U.S. 266,275,108 S.Ct. 2379, 101 LEd.2d 245 (1998) "MAIL BOX RULE" Applicability is require,

RESPECTFULLY SUBMITTED

Carlos M. Escobar Figueroa

CARLOS M. ESCOBAR-FIGUEROA

Acting Pro se

Reg. N° 23585-069 ("G" Unit)

P.O. Box 779800

/ MIAMI, FLORIDA. 33177-0200 /

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

07-2042(PG)

CARLOS M. ESCOBAR FIGUEROA
Movant/Petitioner.,

Vs.

UNITED STATES OF AMERICA
Respondent.,

CASE N°: 02-CR-393-23(PG) /

**LETTER OF INTRODUCTION AND MOVANT'S POSITION
PURSUANT TO MOTION UNDER TITLE 28 U.S.C. §2255
MOTION TO VACATE, SET ASIDE, AND/OR CORRECT SENTENCE**

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

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TO HONORABLE COURT:

PLEASE TAKE NOTICE, that upon the answered duly verified transcripts, Sentence Hearing, Pre-Trial proceedings as well Direct Appeal in the Case above mentioned [02-CR-393-23(PG)] , Comes Now the Movant-CARLOS M. ESCOBAR FIGUEROA, an Inmate hereby acting Pro-Se (28U.S.C. §1624), and upon all the Papers(Transcripts), Law of the Case, Constitutional involvements and all proceedings had herein, the undersigned respectfully moves to Honorable Sentence Court to :Vacate, Set Aside and/or Correct the Sentence in its and independent Civil action pursuant to Title 28 U.S.C. §2255, and Movant Pray for the Court to considered the learnings from **RAUTHER, Vs. UNITED STATES**, 871 F2d. 693, 695(1989) and **HAINES Vs. KERNER**. 404 U.S. 519, 520 (1972).. "[W]here the U.S. Supreme Court stated that Pro-Se Pleadings are held under less stringents standards than formal pleadings drafter by a Lawyers.

Moreover ,Movant/Petitioner would like to **be clear** that in his Arguments aand claims; [He] are Argue and claimed to **be correc-
ted** the part of the sentence that is illegal, leaving along the co-
rrect part, having into consideration the Law applicable to the Ca-
se and the respect of the Constitutional Right of the Individual
including the well know Due Process of Law.

Movant claims are related to the crystal clear existence of Constitutional Violations as FIFTH & SIXTH Amendment guarantees of the Individual(s), sittuations that are enlighten in the attached "Memorandum Of Law" in support of this Motion under 28 U.S.C.§2255 The last action in COURTS was NOVEMBER 06,2006., denied of the "Cer-
tiorari" by the U.S. Supreme Court **reason** for assert that this Motion is filed on time according with the enlighten in the Antiterrorism and Death Penalty Act. 1996 and the enlighten in Pub. L. 104-132, Title I,§105,110 Sta.1220 from APRIL 24,1996.

Motion was given to the Prison authorities for forwarding the same Via First Calss Mail Postage Pre-Paid to the interested Party (ies) and Original and Two(2) copies of the same to the CLERK OF THE COURT, reason (s) for claim applicability if necessary of the "MAIL BOX RULE" according with the teachings from: **HOUSTON Vs. LACK** 487 U.S. 266,275,108 S.Ct. 2379,101 L.Ed. 2d. 245 (1998) ;**VANDERBERG Vs. DONALSON**,259 F3d 1321,1325 N#4. (2001); **WASHINGTON Vs. UNITED STATES**, 243 F3d. 1299,1301 (2001).

Moreover, is the position of this Movant-ESCOBAR-FIGUEROA to submit this action **with** the purpose to seek in "**bona fide**" an initial consideration by the Honorable Court presiding this action over.....

.....The existence of "Questions Of Law" and "True Facts" raise and argue in this Motion under 28 U.S.C. §2255.....this together with all file(s) in Court Records as transcripts and Law of the Case related to the Judgment under Attack.

[A]s.....enlighten some of the Grounds raised by this Movant's where He alleges that He is being Convicted and Sentence Illegally, by virtue of the undoubtedly fact of "Constructive Amendment to the Indictment" Lack Of Jurisdiction according with the new discovery of Lack Of Jurisdiction of the District Courts **over all** Federal offenses fundamental errors that occurred in pass **H.R. 3190 P.L. 80-772** where "Congressional Journals clearly **show** that the "House And Senate"**each passed two separate bills that were grossly different**. According to the Constitution, this **means** that neither bill ever became Law. NOTICE, that many cases (dozens) Cases are pending this challenge to Public Law 80-772 that erroneously give Jurisdiction to District Court (Courts Article III) over all Federal offenses. "Disparity of Sentence with others more culpable-guilty that receive a very light sentence and with other under the same circumstances. The above Questions of Law given to this Movant-ESCOBAR-FIGUEROA the opportunity to raise the issue of "Ineffective Assistance of Counsel" during Pre-Trial, Trial, Sentence Hearing, and Direct Appeal, an "Structural error" that affect the complete frame of the Case, affect the Right Protection guarantee to the Individual in all criminal Case by the SIXTH Amendment Rights to have and "Effective Legal Assistance. []Existence of these Questions Of Law and Facts **must he deserve an "answer"** to keep credibility in our legal system...

.....as well maintain the [good] running of the Court's room(s) and most important that "JUSTICE MUST BE RENDER" avoiding any factual and Manifest **"Miscarriage of Justice"**.

Moreover, the Judgement of our concern is "Unlawful And Void" because of the Multiple Constitutional Violations as well "Due Process Of Law" violations that are enlighten in the correspondent "Memorandum Of Law" in support, attached to this Introductory letter and Form for 28 U.S.C. §2255.

[]Also Movant agree that all the Courts Federal and State alike **must** take Judicial Notice[R.Evid. Rule 201(d)(e)(f)], of CONSTITUTIONAL VIOLATIONS and this case at bar is not different..... the violation(s) are crystal clear. MOVant's agree that: [T]he Constitution is intended for the observance of the Judiciary **as well any** department of the Government as The United States Attorney Office...And **most** important the Judges are Sworn to Support its provisions[28 U.S.C. §453] The Courts are not at Liberty to overlook **or** disregard its comands **or** countenance evasion thereof.

[F]or the above enlighten reason(s) in this "Introductory Letter to Motion under Title 28 U.S.C. §2255., Movant-Escobar-Figueroa, pray to Honorable Court to consider the merits of the Claims(s) raise in this pleadings and determining in an "Opinion **or** decision the Issues presented **or** as alternative Granted an "Evidentiary Hearing[Rule 8 controlling §2255 Motions], for "Supplement the Court Records that are **short** in some of the matters presented as the Claim of "Ineffective Assistance of Counsel" an Structural error ,reversible Per-Se and clear violâtion of the Sixth Amendment.

Movant-ESCOBAR pray to Honorable Court to accept Jurisdiction over this Case; Order the Respondent to "response" to the merits of this claims indicating Legally WHY?? Movant/Petitioner no deserve the relief that He is entitled under the Tenets of Law. "Freeing Him and make applicable the "remedy (ies)"that the Constitution and the Law of the Case mandate and/or indicate. Correct the part of the sentence that is Illegal as well amend the disparity of sentence that exist among defendants simila situated. Granted the remedies that are indicated by the Law, The Constitution and reflected in our Legal System to fulfill the requirement of Justice as well any other remedy that Honorable Judge presiding deems necessary in favor of the Justice to be render.

MOVANT SHALL EVER PRAY FOR
EQUAL OF JUSTICE FOR ALL THE
INDIVIDUALS, BASES OF OUR CONSTITUTION.

RESPECTFULLY SUBMITTED
Carlos m Escobar Figueroa
CARLOS M. ESCOBAR-FIGUEROA
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/MIAMI, FLORIDA. 33177-0200 ?

DATED: On this 24 days
October 2007. /

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DISTRICT OF PUERTO RICO
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